

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	

REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation, on behalf of its incumbent local exchange (“ILEC”), competitive LEC (“CLEC”)/long distance, and wireless divisions, respectfully submits its reply to Comments filed December 20, 2002 in response to the Public Notice¹ requesting comments on the Joint Board’s October 16, 2002 *Recommended Decision* in the above-referenced proceeding.²

Sprint believes Verizon appropriately set the stage for this proceeding with its reminder that:

At the outset, it is important to note that the 10th Circuit Court of Appeals did not find that the Commission’s high-cost funding mechanism for non-rural carriers was unlawful – it simply remanded the *Ninth Report and Order* for a better explanation and justification for the Commission’s decision that the mechanism meets the universal service goals of section 254 of the Act.³

¹ Public Notice, *Comment Sought on the Recommended Decision of the Federal-State Joint Board on Universal Service Regarding the Non-Rural High-Cost Support Mechanism*, DA 02-2976, released Nov. 5, 2002.

² In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Recommended Decision*, FCC 02J-2, released October 16, 2002 (“*Recommended Decision*”).

³ Comments of Verizon on Recommended Decision at p. 2.

As Sprint and many other parties⁴ argued in their Comments, the *Recommended Decision*, with one exception, provides the required explanation and justification.

Several commenters object, for various reasons, to the use of the 135% of nationwide average cost as the benchmark for determining eligibility for non-rural, high-cost support. SureWest argues that rates, not cost, should be used because rates and cost are not comparable and because the goal of the Act is reasonably comparable rates, not cost.⁵

Sprint strenuously disagrees. At a time when the Commission needs to be implementing measures to encourage states to act and assume their share of the burden by moving toward reasonably comparable rates, using rates as the basis would actually give states a disincentive to act. Providing explicit support based on rates allows rates to remain exactly where they are; it removes the reason to rebalance or otherwise remove implicit subsidies and move rates toward cost.

Sprint agrees with Verizon that:

States have pursued different rate structure policies, have used different types of implicit or explicit mechanisms to support universal service, and have used different rate-making methodologies (rate of return, price caps, etc.), to name a few. Consequently, simply comparing rates may not correctly identify states that need additional support from the federal fund to maintain reasonably comparable urban and rural rates.

Ultimately, a state's need for additional funding depends on whether its costs are significantly higher than average. If not, the state should be able to design rates that are reasonably comparable to those prevailing nationwide.⁶

⁴ See e.g., Comments of Verizon, Comments of AT&T Corp. on the Joint Board's Recommended Decision, and Comments of the New York State Department of Public Service in the matter of the Recommended Decision of the Federal-State Board on Universal Service.

⁵ Comments of SureWest Communications on Recommended Decision at pp. 16-19.

⁶ Verizon at pp. 5-6.

Qwest does not object to using a cost average, but argues that the appropriate benchmark should be average urban cost, not average nation-wide cost. However, the use of an urban cost benchmark will not recognize the role that the states have to play in achieving reasonably comparable rates. As AT&T argued:

As the Commission has put it, the states' role is to ensure reasonable comparability within the states, and the Commission's role is to ensure reasonable comparability among the states. ... If the Commission is to play this role, however, the benchmark used in the interstate support mechanism *cannot* be a benchmark of urban costs. If it were, the Commission would effectively become the guarantor of reasonable comparability within the states. As everyone agrees, the states must take the first step by using the resources available within the state to balance rates within the state. In most cases this will obviate the need for the Commission to become involved at the interstate level. In balancing rates within the state, however, the urban rate becomes equal to the statewide average cost. Thus, for the purposes of the federal funding mechanism, the Commission must consider the urban rate to be equal to statewide average cost. Otherwise, the interstate mechanism would be funding the first dollar above urban cost and would in effect be replacing support that can and should be coming from intrastate sources.⁷

Qwest argues that 135% is too high, if nation-wide average cost continues to be the basis for determining eligibility, and that the size of the federal fund must increase. However, Qwest agrees with Sprint, and others,⁸ that local rates need to be rebalanced and implicit subsidies removed.⁹ Sprint believes Qwest's argument about the 135% level is premature. As noted, Sprint believes that local rates must be rebalanced and believes that this is obviously part of what was expected to happen when the FCC adopted the 135% in the first place. But until that (rebalancing) takes place, it is impossible to determine with any certainty that the 135% level is insufficient or ineffective. The 135% level cannot be evaluated until the other parts of the overall non-

⁷ AT&T at pp. 15-16.

⁸ Verizon at p. 6, AT&T at p. 15, Comments of SBC Communications Inc. at pp. 22-26.

rural, high-cost Universal Service Support mechanism are functioning as intended. In short, it is premature to argue that 135% is too high, when it is obvious that many things that must be done on the state side, have not been done.

Furthermore, in criticizing the current 135% as insufficient for achieving state-to-state rate comparability Qwest overlooks a key fact: The federal mechanism is limited to affecting state-to-state rate comparability, because within-state rate comparability is dependent on state-level action. But the converse is not true: State mechanisms are not limited to affecting within-state comparability. The states themselves can also play a role in achieving state-to-state rate comparability. Consider a scenario in which a state's urban and rural rates are reasonably comparable to each other yet the state, for whatever reason, has left in place significant implicit subsidies. These implicit subsidies may cause both rural and urban rates for basic service to be not only below cost, but significantly below other states' rates. Thus, lowering the 135% would disincent rate rebalancing because it would allow a state to obtain federal funds by keeping implicit subsidies which maintain incomparable state-to-state rates.

Likewise, Sprint strenuously disagrees with Qwest's argument that the size of the federal fund must increase. Numerous other parties agree with Sprint. As AT&T points out:

Both the Commission and the courts have consistently acknowledged the validity of this principle. For example, the Commission has noted that "collecting more support than is necessary would increase all rates for all subscribers, "which would itself threaten universal service. [Citations omitted.] Similarly, the Fifth Circuit has expressly recognized that "excessive funding may itself violate the sufficiency requirements of the Act," and the "excess subsidization in some cases may detract from universal service by causing rates unnecessarily to rise, thereby pricing

⁹ Qwest at pp. 12-15.

some¹⁰ customers out of the market.” [Citations omitted.] The Tenth Circuit explicitly acknowledged that the Commission had ample authority to adopt this as an additional Section 254(b) principle, and the Commission should do so. [Citations omitted.]

For all of these reasons, Section 254(b)(3) cannot plausibly be read as authorizing a significant expansion in the federal universal service fund.

The concern with the 135%, the lack of action on the part of some states, and the request for an increase in the size of the federal fund all lead directly to the one point in the *Recommended Decision* where Sprint has the most serious reservations – providing the states the opportunity to demonstrate that further federal action is needed. Numerous parties share Sprint’s concern.¹¹ For the most part, commenters are concerned that the process for additional funding is ill-defined and lacking in guidelines and Sprint agrees. At a minimum, guidelines must be adopted that require that a state asking for additional support must bear a heavy burden of demonstrating that it has taken all actions it can to achieve reasonably comparable rates, including rate rebalancing and abandonment of value of service pricing.

In summary, Sprint supports most aspects of the Joint Board’s *Recommended Decision* and believes that it provides the needed justification and explanation that the mechanism meets the universal service goals for high-cost, non-rural funding. However, Sprint believes the FCC should reject the Joint Board’s recommendation for additional federal support. If the FCC does adopt this recommendation, it must ensure that the requesting state has demonstrated that it has taken all steps possible to achieve reasonably

¹⁰ AT&T at p. 12.

¹¹ See e.g., Comments of the New York State Department of Public Service in the Matter of the Recommended Decision of the Federal-State Joint Board on Universal Service at p. 2, Comments of the Wyoming Public Service Commission on the Joint Board

comparable rates before granting additional support, in order to keep the federal fund from growing beyond necessary levels.

Respectfully submitted,

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Recommended Decision at pp. 7-8, Comments of the Public Utility Commission of Texas at pp. 2-5, and Comments of the Rural Independent Competitive Alliance at pp. 3-4.